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Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

Note by the Secretary-General

The Secretary-General has the honour to submit to the General Assembly, pursuant to General Assembly resolution 59/198, the report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its sixth session.

* A/60/150.

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Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its sixth session

I. Introduction

1. In its resolution 56/168, the General Assembly decided to establish the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, based on a holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.

2. In its resolution 59/198, the Assembly decided that the Committee should hold, within existing resources, prior to the sixtieth session of the Assembly, two sessions in 2005, of 10 working days each, to be held, respectively, from 24 January to 4 February and in July/August.

II. Organizational matters

A. Opening and duration of the sixth session

3. The Committee held its sixth session at United Nations Headquarters from 1 to 12 August 2005; it held 20 meetings.

4. The Division for Social Policy and Development of the Department of Economic and Social Affairs acted as the substantive secretariat, while the Disarmament and Decolonization Affairs Branch of the Department for General Assembly and Conference Management served as the secretariat of the Committee.

5. The sixth session of the Committee was opened by its Chairman, Don MacKay, Ambassador of New Zealand.

B. Officers

6. On 13 April 2005, the Committee held its organizational meeting, at which the following officers were elected to serve on its Bureau:

Chairman:

Don MacKay (New Zealand)

Vice-Chairpersons:

Jorge Ballestero (Costa Rica)
Ivana Grollová (Czech Republic)
Mu'taz Hyassat (Jordan)
Laoura Lazouras (South Africa)[1]

[1] Elected on 1 August 2005.

C. Agenda

7. At its 1st meeting, on 1 August 2005, the Committee adopted the provisional agenda for its sixth session, as contained in document A/AC.265/2005/L.3, as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Continuation of consideration of the proposed revisions and amendments to the draft text of the Working Group as contained in the reports of the Ad Hoc Committee on its third session (A/AC.265/2004/5, annex II), fourth session (A/59/360, annex IV) and fifth session (A/AC.265/2005/2, annexes II and III).
6. Conclusion of the Ad Hoc Committee at its sixth session.
7. Adoption of the report of the Ad Hoc Committee on its sixth session.

D. Documentation

8. The Committee had before it the following documents:

(a) Report of the Committee on its fifth session (A/AC.265/2005/2);

(b) Note verbale dated 18 July 2005 from the Permanent Mission of Morocco to the United Nations addressed to the Secretariat (A/AC.265/2005/3);

(c) Provisional agenda for the sixth session of the Committee (A/AC.265/2005/L.3);

(d) List of participants (A/AC.265/2005/INF/2);

(e) Proposed programme of work for the sixth session of the Committee (A/AC.265/2005/CRP.3);

(f) The concept of "special" measures in international human rights law: background document prepared by the Office of the United Nations High Commissioner for Human Rights (A/AC.265/2005/CRP.4);

(g) Legal capacity: background document prepared by the Office of the United Nations High Commissioner for Human Rights (A/AC.265/2005/CRP.5);

(h) Report of the Committee on its third session (A/AC.265/2004/5 and Corr.1);

(i) Report of the Working Group (A/AC.265/2004/WG.1);

(j) Report of the Committee on its fourth session (A/59/360).

III. Organization of work

9. At its sixth session, the Committee conducted informal discussions on articles 15, 15 bis, 24 bis, and 16 through 25 of the draft convention, in accordance with the programme of work adopted at its first meeting, on 1 August 2005. At its 20th meeting, on 12 August, the Committee heard the report of the Chairman on the progress made in the informal discussions held on the aforementioned draft articles (see annex II). The Committee decided to continue to review the draft convention at its seventh session.

IV. Recommendations

10. The Committee recommends that it continue its work in 2006 and that it hold, within existing resources, prior to the sixty-first session of the General Assembly, two sessions in 2006, of at least 10 working days and up to a maximum of 15 working days each, to be held, respectively, in January and August.

11. The Committee invites the members of its Bureau to hold intersessional meetings in regard to the preparation and organization of its seventh session, including the preparation of the provisional agenda, which should be issued at least four weeks before the seventh session.

12. With regard to accessibility and in accordance with General Assembly resolutions 58/246 and 59/198 and decision 56/474, the Committee reiterated the need for additional efforts to be made to ensure accessibility at the United Nations, with reasonable accommodation as regards facilities and documentation for all persons with disabilities.

13. In that regard, the Committee requests the Secretary-General to explore and implement innovative measures, within existing resources and in consultation with organizations of persons with disabilities and the Bureau, for the provision of selected documents in Braille. The Committee requests the Secretary-General to report to it at its seventh session on the implementation of this recommendation.

14. The Committee calls upon the organizations and bodies of the United Nations system, including the World Bank, to intensify their cooperation in support of the work of the Committee, as well as in anticipation of the implementation of the draft convention, and invites the Department of Economic and Social Affairs, in close collaboration with the Office of the United Nations High Commissioner for Human Rights, to take the necessary steps to secure this inter-agency collaboration.

V. Adoption of the report

15. At its 20th meeting, on 12 August, the Committee adopted the draft report on its sixth session (A/AC.265/2005/L.4), as orally amended.

Annex I

Additional non-governmental organizations accredited to the sixth session of the Committee

Abilities

Action on Disability and Development

Afghan Disabled Union

Autisme Europe

British Council of Disabled People

Consiglio Nazionale sulla Disabilità

Consortium of Humanitarian Agencies

Federation of and for People with Disabilities

Friends of Peace and Development Organization

Gambia Future Hands on Disabled People

Instituto Paradigma

International Stuttering Association

Iraqi Handicapped and Survivors Society

Lebanese Physical Handicapped Union

Leonard Cheshire International

Mine and Weapon Victims Association

Peace and Tolerance International Organization

Persons With Pain International

Society for Mental Health Care

Sudan Association for Combating Landmines

Union des personnes handicapées du Burundi

Annex II

Report by the Chairman

1. The Ad Hoc Committee held informal and formal meetings from 1 to 12 August 2005 on draft articles 15, 15 bis, 24 bis, and 16 through 25.

2. The text of the draft convention prepared by the Working Group (A/AC.265/2004/WG.1, annex I) formed the basis for the discussion, which took into account various amendments and proposals made during previous meetings, as contained in the compilation document.

3. The aim of the discussions was to clarify as many of the issues concerning the draft articles as possible. The present report indicates areas of general agreement on language and areas where there remains a divergence of views that will need to be resolved subsequently. Where general agreement was reached, it was on the clear understanding that it was without prejudice to the ability of delegations to reconsider the draft articles at a subsequent stage, when the shape of the overall convention became clear.

4. It was again clear from the discussion that there are overlaps and duplications between provisions in some articles, which deal with similar matters, and this will need to be rationalized. There were also suggestions for restructuring and streamlining some articles, which will need to be taken into account.

5. Many of the draft articles deal with economic, social and cultural rights, which are to be realized to the maximum of available resources; that is, they are subject to the doctrine of progressive realization. Some of those draft articles also cover civil and political rights, which are of immediate effect and to which the doctrine of progressive realization does not apply. This can make it difficult to insert a reference in the chapeaux to those draft articles saying that they shall be progressively implemented. It was agreed that the matter needed to be dealt with in the convention, perhaps by a generic provision in draft article 4.

6. The issue of whether the convention should "recognize" or "ensure" a right, and related questions around similar language, arose several times during these negotiations. The Committee will need to look at making these terms consistent throughout the convention. Similarly, the Committee will also need to address proposals that were made throughout the text to insert language such as "on an equal basis with others" and "equitable".

Summary of discussions on the structure of the draft convention

7. The Committee considered the structure of the draft convention in general terms. A number of delegations suggested that certain draft articles should be shifted elsewhere in the draft convention in order to place them within a more suitable or logical grouping of draft articles.

8. It was agreed that it would be largely unhelpful to try to place a rigid demarcation in the draft convention between those draft articles dealing with "civil and political" rights and those dealing with "economic, social and cultural" rights, especially as many of the draft articles were of a hybrid character. It was also

important to avoid creating the appearance of a "hierarchy" of rights in the draft convention.

9. There was general agreement that the articles in the draft convention should be clearly delineated and avoid unnecessary repetition.

10. The Committee considered that "titles" could contribute to the accessibility of the draft convention. This issue was to be given further thought.

Discussion of draft articles

Draft article 15

11. There was general support that there should be an article in the convention on this issue, and that the Working Group text was a good basis for discussion. There was general support for the essence of draft article 15, that persons with disabilities should be free to choose their living arrangements on an equal basis with others. It was also noted that the key to this draft article was the right of every person with disabilities to live in the community.

Chapeau

12. There was support to redraft the chapeau as follows:

> "States Parties to this Convention shall take effective and appropriate measures to [enable/facilitate] full enjoyment by persons with disabilities of their freedom of choice, independent living and full [inclusion/participation] in the community, including by ensuring that: [...]"

13. The Committee noted that the use of the word "facilitate" might not be linguistically correct, and that this would need to be looked at again when draft article 15 was next discussed.

14. There was some support for a proposal to redraft the chapeau so that it drew on article 12 of the International Covenant on Civil and Political Rights, and incorporated the right of persons with disabilities to liberty of movement and freedom to choose their residence. Others, however, argued that the proposal did not take into account the limits on this right that were contained in the Covenant.

Subparagraphs (a) and (b)

15. There was support to merge subparagraphs (a) and (b), with slight amendment, so that they read:

> "(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in [an institution or] a particular living arrangement."

16. Some delegations objected to the inclusion of any reference to "institutions", and proposed the deletion of the substance of subparagraph (b) on the basis that it was covered under either draft article 10 or in the substance of subparagraph (a). Other delegations proposed to append paragraph (b) with clauses such as "except where necessary" or "subject to the provisions of article 10". It was noted, however,

that such language went beyond the situations set out in draft article 10, and would undermine the approach taken in that draft article.

17. There was general agreement that there was an element of duplication with draft article 10, and that when that article was next discussed it should be ensured that the elements of draft article 15, subparagraph (b), were adequately covered to avoid the duplication.

Subparagraphs (c), (d) and (e)

18. There was a proposal to insert a new subparagraph (c) bis, which would address the manner in which support services were to be provided. The Committee noted that this proposal replicated elements that appeared in the preamble and under draft article 4, although there might also be a place for inclusion in the context of this draft article.

19. There was general agreement that the phrase "and facilities" should be inserted in subparagraphs (d) and (e) after the word "services".

20. It was noted that draft article 15 (e), with the additional language of "and facilities in a format that is accessible to and in plain language" could be considered in future discussion on draft article 19.

21. The Committee noted that subparagraphs (c), (d) and (e) related to economic, social and cultural rights, and as such were progressively realizable. While it had been previously agreed that draft article 4 should include the concept of progressive realization, it was noted that that did not necessarily preclude the use of progressive realization language in draft article 15 or in other articles containing hybrid or ambiguous provisions. The issue of how to address economic, social and cultural rights in the draft convention was an issue still to be properly discussed.

22. A view was expressed that in draft article 15, subparagraphs (a)-(e) were not helpful in that by "listing" measures that States Parties must take, it could be perceived as excluding other, unlisted, measures. The Committee noted that the subparagraphs were illustrative only, and not an exclusive list.

Draft article 15 bis

23. The Committee noted that while all women are covered under the Convention on the Elimination of All Forms of Discrimination against Women, that Convention does not specifically mention women with disabilities and there are no other legally binding texts that do. There was general agreement in the Committee, therefore, to include in the Convention the principle of gender equality. All delegations agreed that the Convention needed to adequately address the situation of women with disabilities.

24. There were different views expressed, however, on how best to achieve this aim in the convention. Some delegations supported the proposal for a stand-alone article. Others suggested that a reference in the preamble, combined with language in the general principles, the general obligations or the monitoring section, best met the aim. Others proposed to mainstream gender issues throughout thematic articles of specific relevance to women. Others supported both a separate article and mainstreamed references.

25. The Chair noted that delegations should bear in mind that any programme of action to implement the convention would be an additional place to deal with the situation of those that faced additional disadvantage due to discrimination on intersecting grounds.

26. The issue of women with disabilities was referred to the facilitator (Theresia Degener, Germany) to explore further the best approach and examine where and if there were gaps in the convention that needed to be addressed from a gender perspective.

Draft article 16

27. There was general agreement in the Committee that some specific references to children with disabilities were needed in the draft convention. There was also general agreement that draft article 16 did not add much substance to what was already contained in article 23 of the Convention on the Rights of the Child.

28. Views varied in the Committee on how best to include children with disabilities in the draft convention. Proposals included retaining a separate (but redrafted) article on children; a reference in the preamble with a general statement in a draft article of horizontal application (such as draft articles 2, 4 or 25) or mainstreaming references in relevant thematic draft articles.

29. The issue of children with disabilities was referred to the facilitator (Josephine Sinyo, Kenya) to explore further the best approach.

Draft article 17

30. The Committee noted that education laid the foundation for the participation by persons with disabilities in society as a whole throughout their lives, and that inclusiveness was one of the main themes of the article (and of the convention more generally). There was a need to balance that with the other main theme of education options for persons with disabilities.

Paragraph 1

31. There was general agreement in the Committee that the obligations of States in this draft article should not be qualified, and it was noted that the issue of progressive realization of economic, social and cultural rights could be dealt with in an earlier general article that applies to the whole convention, including this paragraph.

32. There was otherwise general acceptance of the first sentence of paragraph 1 of the Working Group text. There was also general support to include, as the second and third sentences of paragraph 1, a proposal on inclusiveness in the general education system.

33. There was general agreement to replace "children with disabilities" with "persons with disabilities" throughout this draft article, except in subparagraph 1 (d) of the Working Group text, where the word "child" would continue to be more appropriate.

34. There was also general agreement to include the word "creativity" in subparagraph 1 (c).

35. The Committee noted the important reference to the "best interests of the child" in subparagraph 1 (d), and agreed that the subparagraph should not use weaker language than was employed in the Convention on the Rights of the Child. But there were divergent views on whether article 17 was the appropriate place for such a reference. There were also divergent views on whether to retain the reference to "individualized education plans" from the Working Group text. Some delegations supported the idea, but could not agree as to how it should be expressed. Other delegations wanted the reference deleted.

36. Following the discussion, paragraph 1 currently reads:

> "1. States Parties recognize the right of all persons with disabilities to education with a view to achieving this right [progressively and] on the basis of equal opportunity. States Parties commit themselves to the goal of inclusiveness of their general education systems. Where exceptionally the general education system does not adequately meet the needs of persons with disabilities, States Parties shall take appropriate measures to ensure [quality/effective] alternative forms of education, bearing in mind the goal of full inclusion. The education of persons with disabilities shall be directed to:
>
> "(a) the full development of the human potential and sense of dignity and self worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
>
> "(b) enabling all persons with disabilities to participate effectively in a free society;
>
> "(c) the development of the personality, creativity, talents and mental and physical abilities of persons with disabilities to their fullest potential;
>
> "(d) the best interests of the child, which shall be of primary consideration, [in particular by individualizing education [plans] [and methods]] [...]"

Paragraph 2

37. On subparagraph 2 (c), there was some support to add the word "secondary". In doing so, the Committee noted that the reference, which now reads "free and compulsory primary or secondary education", did not create any new obligation for States to provide free and compulsory secondary education. Rather, the provision is a non-discrimination one, and means that if a State did provide free and compulsory secondary education to the general population, then it should also be provided to persons with disabilities.

38. Paragraph 2 currently reads:

> "2. In realizing this right, States Parties shall ensure:
>
> "(a) that all persons with disabilities [choose inclusive and accessible quality/effective education] [have access to quality/effective education in the general education system] [throughout their lives] [to the extent possible] in the communities in which they live (including access to early childhood and pre-school education);
>
> "(b) required support, including specialized training of teachers, school counsellors and psychologists, an accessible curriculum, an accessible

teaching medium and technologies, alternative and augmentative communication modes, alternative learning strategies, accessible physical environment or other reasonable accommodations to ensure the full participation of students with disabilities;

"(c) ensure that no person with disabilities is excluded from free and compulsory primary or secondary education, or denied access to education, on account of their disability."

Paragraph 3

39. There was general support to replace paragraph 3 of the Working Group text. Some delegations favoured broadening the coverage of this paragraph to include all persons with disabilities. But the Committee accepted that this might be used as a basis for excluding all children with disabilities from the general education system. There was general support, however, that children with particular disabilities, such as blind, deaf and deaf-blind children, may need to commence their learning in an environment that is more specific to their needs. This would allow them to gain maximum benefit from a fully inclusive general education system, and ultimately more effectively participate in society.

40. One proposal, that received some support, reads:

"3. States Parties shall ensure that blind, deaf and deaf-blind children and young persons have the right to choose education in their own groups and settings, where they shall be provided with the same level of support and standards, consistent with other provisions in this article."

Paragraph 4

41. The Ad Hoc Committee debated the issue of acquisition of life skills. While some delegations supported including this issue in a separate draft article 17 bis, most delegations were in favour of including the concept in this paragraph. Many delegations also emphasized the importance of training and education.

42. The Ad Hoc Committee also agreed to use the same language on types of communication that was proposed during the discussion of draft article 13.[a]

43. Paragraph 4 currently reads:

"4. States Parties shall ensure that children with sensory and communication disabilities may choose to be taught sign language or Braille, as appropriate, and to receive the curriculum in sign language, or Braille, or augmentative alternative communication or other accessible means, modes and formats of communication. States Parties shall take appropriate measures to ensure [quality/effective] education to students with sensory disabilities by ensuring the employment of teachers who are fluent in sign language or Braille. States Parties shall take appropriate measures to ensure that people with disabilities have the opportunity to learn the life, social development, orientation and mobility skills that are required for people with disabilities to participate on an equal basis with others as members of the community."

[a] See A/AC.265/2005/2, annex II, para. 69.

Paragraph 5

44. There was general agreement to retain paragraph 5 of the Working Group text.

45. Paragraph 5 currently reads:

> "5. States Parties shall ensure that persons with disabilities may access general, tertiary education, vocational training, adult education and lifelong learning on an equal basis with others. To that end, States Parties shall render appropriate [assistance/support] to persons with disabilities."

46. The draft article was referred to the facilitator (Rosemary Kayess, Australia) for further discussion.

Draft article 18

47. There was general agreement to the importance of this draft article. There was also general agreement that its provisions needed to be strengthened to better reflect the stronger commitments found in similar provisions of the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women.

48. The Committee noted that General Comment 23 of the Committee on the Elimination of Discrimination against Women provided some useful guidance in relation to this article.

Subparagraph (a)

49. There was general support to strengthen the chapeau of subparagraph (a) by replacing the opening phrase "actively promote an environment in which" with the phrase "ensure that".

50. There was general support to change the term "citizens" to "persons" in subparagraph (a) and subsequent subparagraphs. This would be consistent with the term used in the Convention on the Elimination of All Forms of Discrimination against Women, and also reflect that in many States some non-citizens (such as permanent residents) have the right to vote and therefore no lesser standard should be accepted for persons with disabilities.

51. To ensure that there would be no expectation that States should grant extra political rights to persons with disabilities that others did not enjoy, the Committee agreed to add the phrase "on an equal basis with others". That would ensure that no State would be obliged to give non-citizens with disabilities a right to vote if non-citizens in general would not be entitled to vote.

52. A proposal to add a phrase "and materials" to the end of the chapeau received no opposition. The phrase is intended to clarify that all aspects of voting and participation in political life should be accessible.

53. Following the discussion, subparagraph (a) now reads:

> "(a) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others [and in accordance with national laws outlining political rights for all people], directly or through freely chosen representatives, including the right and opportunity of

persons with disabilities to vote and be elected, by ensuring that voting procedures, facilities and materials: [...]"

Subparagraphs (a) (i), (a) (ii) and (a) (iii)

54. There was general support on the inclusion of these three subparagraphs, although a number of technical issues were raised.

55. In particular, the Committee noted that a secret ballot might not always be technically possible for some persons with disabilities. Wording such as "in accordance with the law" might help, and the phrase "without intimidation" might also be an important qualifier. Such language could help protect people with disabilities who are not able to engage in a completely secret ballot.

56. It was generally agreed that any assistance provided to people with disabilities should only be at their request and provided by someone they trust. It was also noted that political rights are broader than the right to vote in elections and several delegations wished to express specifically the right to hold office and participate effectively in the political process.

57. There was also agreement to make some minor changes to make the language consistent with the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights.

58. Following the discussion, the subparagraphs now read:

"(i) are appropriate, accessible and easy to understand and use;

"(ii) protect the right of persons with disabilities to vote by secret ballot, [in accordance with law and without intimidation] in elections, and public referenda; to stand for elections and to hold office and perform all public functions at all levels of government;

"(iii) guarantee the free expression of the will of persons with disabilities as electors and to this end, where necessary, allow assistance in voting on their request and by a person of their own choice;"

Subparagraph (b)

59. The Committee considered a number of linguistic and structural proposals that strengthened and broadened subparagraph (b), and also brought it more closely into alignment with the Convention on the Elimination of All Forms of Discrimination against Women.

60. In particular, there was general agreement to delete the term "as appropriate" from subparagraph (b), as it might be misinterpreted as a qualifier. There was a preference by the Committee for the broader term "public affairs", rather than "public administration", in order to be consistent with other international treaties. There was general agreement to add the word "international" to the settings in which persons with disabilities could participate.

61. Following the discussion, subparagraph (b) now reads:

"(b) [actively promote ... an environment in which] [ensure that] persons with disabilities, without discrimination and on a basis of equality between

men and women, can effectively and fully participate in the conduct of public affairs, and shall encourage their participation in public affairs, including to:

"(i) participate in non-governmental organizations and associations concerned with the public and political life of the country, including the activities and administration of political parties;

"(ii) form and join organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels;"

Subparagraph (c)

62. The Committee noted that there was general agreement at its fourth session that the elements of subparagraph (c) should be consolidated in draft article 4, paragraph 2, along with several other provisions from other paragraphs that have general application across the whole convention. Some delegations noted at that meeting, however, that the subparagraph needed to be retained in the context of political participation. The Committee noted that these elements should be considered at a future meeting from the perspective of the balance of text and repetition.

63. Divergent views were expressed on the phrase "in particular those concerning issues relating to persons with disabilities". Some delegations proposed to delete the phrase in order to broaden the paragraph to take into account participation in matters wider than those concerning disability issues. Other delegations, however, considered that there was a need to ensure the primacy of the voice of persons with disabilities in relation to disability issues.

64. Participation in the implementation and evaluation of policy, in addition to decision-making, was also emphasized by several States, in particular in relation to development programmes.

Draft article 19

65. There was considerable discussion in the Committee of the relationship and overlap between draft articles 19 and 20, as well as, to a lesser extent, draft articles 13 and 15.[b] The Committee noted that draft articles 19 and 20 are essentially two sides of the same coin. There was general support to merge the two draft articles.

66. A number of delegations pointed out that "accessibility" was not just about access to buildings. Accessibility also related to, for example, accessible information. It was important to ensure that this draft article did not slant towards one type of accessibility. There was also support to include accessibility as a principle in draft article 2.

Paragraph 1

67. There was general support to redraft the beginning of paragraph 1 to delete superfluous text, in order to make the goal of this draft article clear.

[b] See A/59/360, annex II, paras. 9 and 10.

68. The Committee noted that the words "the focus of these measures" in the last line of the chapeau might have a limiting effect. Delegations agreed to give this issue more thought.

Subparagraphs 1 (a) and (b), 2 (a), (b), (c) and (d)

69. There was considerable discussion on the question of whether subparagraphs 1 (a) and (b) and 2 (a), (b), (c) and (d), which generally refer to public buildings, facilities and services, should also extend to privately owned or developed buildings, facilities and services intended for public use. There was general agreement that access to buildings should be viewed from a "who uses the building" perspective, rather than from a "who owns the building" perspective.

Subparagraphs 2 (e) and 2 (g)

70. The Committee noted the general agreement at the fourth session to incorporate these two paragraphs into paragraph 1 and paragraph 2 of draft article 4, respectively.[b]

71. Draft article 19 currently reads:

> "1. States Parties to this Convention shall take appropriate measures to ensure accessibility for persons with disabilities by identifying and eliminating obstacles to the built environment to transportation, information and communications, including information and communications technologies, and other services, in order to ensure the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. [The focus of] these measures shall include, inter alia: [...]
>
> "(b) the construction and renovation of public buildings, roads and other facilities for public use, including schools, housing, medical facilities, indoor and outdoor facilities and publicly owned workplaces;
>
> "(c) the development and remodelling of public transportation facilities, communications and other services, including electronic services.
>
> "2. States Parties shall also take appropriate measures to:
>
> "(a) provide in public buildings and facilities signage in Braille and easy-to-read and understand forms;
>
> "(b) provide forms of live assistance and intermediaries, including guides, readers and sign language interpreters, to facilitate accessibility to public buildings and facilities;
>
> "(c) develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of public facilities and services;
>
> "(d) [encourage/ensure] private entities that provide public facilities and services to take into account all aspects of accessibility for persons with disabilities;
>
> "(f) promote universal design and international cooperation in the development of standards, guidelines and assistive technologies [...];

"(h) provide training for all stakeholders on accessibility issues facing persons with disabilities."

72. The draft article was referred to the facilitator (Damjan Tatic, Serbia and Montenegro) for further discussion.

Draft article 20

73. The Committee noted that there were three important issues under consideration in the discussion of this article: accessibility in the broadest sense (as dealt with in draft article 19); personal mobility of the individual; and liberty of movement.

74. The Committee also noted that there were considerable overlaps between draft article 20 and draft article 19, along with elements of other draft articles of the Convention. There was general support, therefore, to move elements of draft article 20 to other articles and to delete draft article 20 altogether. In that regard, the Committee noted that there was general agreement at its fourth session that subparagraph (c) should be incorporated into draft article 4.[b]

75. Some delegations were, however, concerned that deletion of the article might result in the loss of essential elements.

76. On the issue of liberty of movement, the Committee noted that this was a right guaranteed under the International Covenant on Civil and Political Rights. There was general agreement that that right should not be ignored. Some delegations noted instances in which the liberty of movement of persons with disabilities was adversely affected by, for example, being denied birth registration or a passport. Language on this issue had been proposed and would need to be further considered by the Committee.

Draft article 21

77. There was general agreement in the Committee that draft article 21 should address the right to health and that a separate draft article 21 bis should address habilitation and rehabilitation. The Committee did not resolve, however, whether to retain medical, or health-related, rehabilitation in article 21, or to delete all references to it and deal with it in article 21 bis. The Committee agreed to consider this issue, and the proposed texts for article 21 bis further, at a later date.

78. It was also generally agreed that the concept of health, as defined by the World Health Organization, was a very broad one and that this needed to be reflected in the text (or a footnote). That could be achieved by using the descriptive language of the International Covenant on Economic, Social and Cultural Rights.

79. A proposal was made that persons with disabilities should not be denied food, water or life support, which was supported by a number of delegations.

Chapeau

80. There was some support to strengthen the chapeau by replacing the word "recognize" with "guarantee"

81. The chapeau currently reads:

> "States Parties [recognize/guarantee] that all persons with disabilities have the right to the enjoyment of the highest attainable standard of physical and mental health without discrimination on the basis of disability. States Parties shall ensure no person with a disability is deprived of that right, and shall take all appropriate measures to ensure access for persons with disabilities to [affordable/free] health and [medical/health-related rehabilitation services]. In particular, States Parties shall: [...]"

Subparagraphs (a) to (m)

82. There was broad agreement that the subparagraphs should be strengthened by the deletion of qualifying words such as "strive", although there was also limited support for retaining the idea of progressive realization in the text.

83. It was also generally agreed that in many of the subparagraphs there was a great deal of duplication of material contained in other articles in the draft convention text and that others were too prescriptive. There were consequently many proposals to streamline or delete subparagraphs including:

(a) Subparagraph (d), which was too prescriptive and, in any case, if retained, more properly would belong in the new proposed draft article 21 bis on rehabilitation;

(b) Subparagraphs (f) and (m), on which there was general agreement at the fourth session to consolidate into draft article 4;[b]

(c) Subparagraph (g), on the grounds that the Committee agreed at its fourth session to consider general language on the training of professionals dealing with persons with disabilities, but without prejudice to its inclusion or ultimate placement in the text;[c] and

(d) Subparagraph (l), which not only replicates part of subparagraph (j), but also is covered in article 14.

84. The Committee noted that where text was to be deleted or merged, there was a need to ensure that important elements were not lost and were incorporated into the text when the same issues were considered again under other articles. It would be necessary, for example, to reconsider whether the confidentiality of medical records was adequately covered under draft article 14.

85. Some delegations proposed the deletion of the words "including sexual and reproductive health services" from subparagraph (a), but there was broad support for retaining it. The Committee noted that this phrase was not intended to alter or prejudice the general policies of Governments in regard to family planning or related matters, to the extent that these were permitted by national legislation of general application. The phrase was a statement on the right to be free of non-discrimination, and its effect was that persons with disabilities would need to be treated on an equal basis with others in this area.

86. On subparagraph (a), there was general agreement to include the concept of population-based public health programmes, and general support to replace the word "citizens" with "persons".

87. On subparagraph (b), there was support to include the concept of early detection and treatment.

88. There was also support for adding "rural areas" after "people's own communities" in subparagraph (c).

89. There were divergent views on whether subparagraph (e) should deal with prevention of secondary disabilities, the prevention of disabilities more generally, or be deleted entirely on the grounds that its provisions were already covered adequately by preceding subparagraphs.

90. There was also some support for proposals to add references to the compatibility of research with respect for human rights and the protection of human life to subparagraph (f), if this subparagraph were retained.

91. There was also general support to merge subparagraphs (h), (i) and (j).

92. Some delegations considered that subparagraph (k) should be deleted because the issue would be covered by draft article 12 bis. Other delegations preferred to retain it here.

93. Following the discussion, paragraphs (a)-(j) of the text read:

"(a) provide persons with disabilities with the same range and standard of [affordable/free] health [and rehabilitation services] as provided other persons, [including sexual and reproductive health services] and population-based public health programmes;

"(b) provide those health and [medical/health-related rehabilitation] services needed by persons with disabilities specifically because of their disabilities [including early identification and intervention as appropriate];

"(c) endeavour to provide these health and [medical/health-related rehabilitation] services as close as possible to people's own communities [and in rural areas] [...];

"(e) [provide programmes and services to prevent and protect against [secondary] disabilities, including among children and the elderly;]

"(f) [encourage research and the development, dissemination and application of new knowledge and technologies that benefit persons with disabilities [that are compatible with the respect for human rights and the protection of human life]] [...];

"(h/i/j) require health professionals to provide care of the same quality to persons with disabilities as to others by, where necessary, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation, in consultation with other concerned parties, of ethical standards for public and private healthcare."

94. The draft article was referred to the facilitator (Mu'taz Hyassat, Jordan) for further discussion.

Draft article 22

95. There was general agreement by the Committee to take a rights-based approach to this article. The Committee also noted that the text of the Convention

should not derogate from existing international instruments, such as International Labour Organization conventions.

96. The Committee expressed a general preference for States to recognize the importance of access by persons with disabilities to the open labour market, in order to empower and enable them to participate fully in society. General concern was expressed about the potential for exploitation of persons with disabilities. The balance of views in the Committee on sheltered workshops was that such settings were undesirable because of the potential for segregation from the community and their conditions of employment. There was agreement that there should be further consideration of that point.

97. The Committee noted that there was a degree of overlap between this article and articles 17, 19 and 21 bis (habilitation or rehabilitation for the purposes of work).

Chapeau

98. There was general agreement that the chapeau should deal with general principles, and that the subparagraphs should deal with measures to realize those principles. With that in mind, the Committee agreed to delete subparagraph (a) and to incorporate its concept in the chapeau. There was also considerable support for the idea that employment of persons by the public sector should be mentioned, because of the role the public sector should play in setting an example for the private sector, and that this idea could be included in the chapeau. This could allow for the deletion of subparagraph (i).

99. The chapeau now reads:

> "States Parties recognize the right of persons with disabilities to work, [on an equal basis with others]; this includes the opportunity to gain a living by work that they freely choose or accept in a labour market and work environment that is open, inclusive and accessible to persons with disabilities, [with a view to promoting equal opportunity and treatment of persons with disabilities,] and protecting them from poverty. States Parties [shall set an example of employment of persons with disabilities] and take appropriate steps to safeguard and promote the realization of this right, including measures to:"

Subparagraph (c)

100. There was general support for dividing subparagraph (c) into two subparagraphs, the first dealing with paid employment and the second with self-employment.

101. Subparagraph (c) now reads:

> "(c) promote [equal] employment opportunities and career advancement for persons with disabilities in the open labour market, as well as assistance in finding, obtaining and maintaining [and returning to] employment;
>
> "(c) bis promote opportunities for self-employment, entrepreneurship and starting one's own business."

Subparagraph (d)

102. There was no agreement on the issue of quotas in subparagraph (d). However, there was support for using less specific language on affirmative action or special measures.

103. Subparagraph (d) now reads:

> "(d) encourage employers to hire persons with disabilities, such as through affirmative action programmes, incentives [and other appropriate policies, support and special measures];"

Subparagraph (e)

104. There was general support to amend the text of subparagraph (e) so that it now reads:

> "(e) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;"

Subparagraph (f)

105. Some delegations proposed that this paragraph could be deleted, while others supported its retention.

Subparagra, h (g)

106. The Committee noted the possibility that subparagraph (g) could either be merged with subparagraph (c) or deleted and covered under p oposed draft article 21 bis.

Subparagraph (h)

107. There was support for including references to conditions of hiring or recruitment and for safe and healthy working conditions in subparagraph (h). In view of its importance, there was also firm support for the placement of this subparagraph immediately under the chapeau as a new subparagraph (a).

108. Subparagraph (h), now subparagraph (a), currently reads:

> "(a) protect through legislation persons with disabilities with regard to conditions of recruitment, hiring and employment, continuance of employment, career advancement, working conditions, including equal remuneration for work of equal value and equal opportunities, safe and healthy working conditions, and the redressing of grievances, and to ensure that persons with disabilities are able to exercise their labour and trade union rights;"

Subparagraph (j)

109. There was general support for deleting subparagraph (j) and to consider the first part of it under draft article 5.

110. The draft article was referred to the facilitator (Dan Oren, Israel) for further discussion.

Draft article 23

111. There was general agreement that the order of paragraphs 1 and 2 should be reversed, so that "adequate standard of living" (para. 2) would be addressed ahead of "social security". There was also a suggestion to create two separate draft articles out of draft article 23, one on an "adequate standard of living", and the other on "social security". The Committee agreed to reflect further on this proposal.

Paragraph 1

112. The Committee discussed options to replace or complement "social security" in order to find a broader phrase to encapsulate the assistance provided by a State, and to ensure that there was no discrimination against persons with disabilities in the provision of that assistance. Suggestions included "social insurance" (currently used in this draft article), "social assistance", "social support", "social safety nets" and "social protection". The Committee noted that further reflection on this issue was required.

113. The paragraph, now paragraph 2, currently reads:

> "2. States Parties recognize the right of all persons with disabilities to [social security, including social insurance/social assistance/social support/social safety nets/social protection], and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures to: [...]"

Subparagraph (a)

114. Proposals for this subparagraph included specifying that the services, devices and other assistance referred to in this provision should be offered "free of charge", a proposal that had also been made in the context of other draft articles. There was resistance to this specific proposal, although it was agreed that delegations were committed to the concept of "affordability".

115. There was general support to replace "necessary" with "appropriate" in this subparagraph, in order to ensure consistency with the rest of the draft convention.

116. Subparagraph (a) currently reads:

> "(a) ensure access by persons with disabilities to appropriate services, devices and other assistance for disability-related needs;"

Subparagraph (b)

117. There was general support for the deletion of the references in this subparagraph to particular groups of persons with disabilities, and it was noted that the incorporation of "women" and "girls" (children) into the draft convention was being examined by the facilitators on those issues. The difficult situation of many aged persons with disabilities was also highlighted, but there was no agreement as to how this issue should be handled.

118. The Committee noted that taking into account the needs and perspectives of persons with disabilities was addressed in draft article 4, paragraph 2. It was agreed that the Committee needed to ensure that the draft convention did not unduly

duplicate coverage of specific issues, and there was general support to delete that phrase.

119. Subparagraph (b) currently reads:

> "(b) ensure [equal] access by persons with disabilities, [particularly women and girls with disabilities and the aged with disabilities,] to [social security/social assistance/social support/social safety net/social protection] programmes and poverty reduction strategies;"

Subparagraph (c)

120. Many delegations suggested that the defining element of this subparagraph was the situation of persons with disabilities living in poverty.

121. There was some support for "severe and multiple" to be deleted from this subparagraph, largely because of the difficulty of defining "severe" and "multiple" and of identifying which categories of persons with disabilities they encompassed. The provision would then simply refer to "persons with disabilities". This was not an unopposed view, however, and other proposals included referring "in particular" to "severe and multiple" disabilities.

122. There was general support to retain the reference to "families" in this subparagraph, as families were particularly relevant in the context of this draft article.

123. Subparagraph (c) currently reads:

> "(c) ensure access by persons with disabilities, and their families, living in situations of poverty to assistance from the State to cover disability-related expenses (including adequate training, counselling, financial assistance and respite care), which should not become a disincentive to develop themselves;"

Subparagraph (d)

124. There was general support to replace "governmental" with "public". It was also agreed that the rest of this subparagraph, from "including", would be deleted.

125. Subparagraph (d) currently reads:

> "(d) ensure access by persons with disabilities to public housing programmes;"

Subparagraph (e)

126. There was general support to delete this subparagraph on the basis that it had the potential to be unduly prescriptive. Some delegations, however, wanted to retain it, and there was a suggestion that this subparagraph should be limited to "disability-related expenses".

Subparagraph (f)

127. The Committee noted that in some countries, and under some religions, life insurance was not looked on favourably. If this subparagraph was to be retained, there was a need to ensure that it did not in any way imply or create a "right to life insurance" in those countries where it was not permitted.

128. Some delegations suggested that the reference to "health insurance" under this subparagraph properly belonged under draft article 21. This issue needed to be considered further by the Committee in order to ensure an integrated text.

Paragraph 2

129. In relation to paragraph 2, some delegations suggested that the "listing" of elements of an adequate standard of living was not necessarily helpful, and could thus be deleted. Other delegations, however, supported such a list, and in particular supported the reference to access to clean water.

130. The paragraph, now paragraph 1, currently reads:

> "1. States Parties recognize the right of all persons with disabilities to an adequate standard of living for themselves and their families, [including adequate food, clothing, housing [and access to clean water]], and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right [without discrimination on the basis of disability]. [States Parties shall ensure that persons with disabilities have access to clean water on an equal basis with others]."

Draft article 24

131. There was unanimous support for this article, and many valuable proposals to strengthen it need to be reflected on further.

132. There was general support to deal with the issues of participation in leisure, sport and recreation, and participation in cultural life separately, but both in the same article.

133. There was general support to include a number of proposals to broaden the scope of the article. These included tourism and the right of children with disabilities to play.

134. There was a proposal to include a provision on participation in religious life in draft article 24 or elsewhere in the text. The general feeling, however, was not to include such a provision in this article.

Paragraph 1 chapeau

135. There was general support to include the phrase "on an equal basis with others" in the chapeau of paragraph 1, so that it now reads:

> "1. States Parties recognize the right of all persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:"

Subparagraph (a)

136. There was general support to replace the word "community" with "society" in the subparagraph. There was general agreement that this subparagraph is about enjoyment of a right, rather than being a measure to implement a right. There was general agreement, therefore, to a proposal to make the subparagraph 1 bis rather than 1 (a).

137. It now reads:

"1 bis. States Parties shall also take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their benefit, but also for the enrichment of society."

Subparagraphs (b), (c) and (d)

138. There was general support to shorten these subparagraphs and to include text related to tourism. They now read:

"(b) enjoy access to cultural materials in all accessible formats;

"(c) enjoy access to television programmes, films, theatre, and other cultural activities, in all accessible formats;

"(d) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and the tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance;"

Paragraph 2

139. A proposal to replace "intellectual property rights" with "copyright" received strong support, but there was no general agreement.

140. The text now reads:

"2. States Parties shall take all appropriate steps to ensure that laws protecting [intellectual property rights] [copyright] do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, while respecting the provisions of international law."

Paragraph 3

141. There was no agreement on this paragraph, with some delegations proposing to delete it and others to retain it.

142. A compromise formula was proposed that gained support from those who supported retention of the paragraph. That proposal reads:

"3. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture."

Paragraph 4 chapeau

143. There was general support to amend the chapeau to make it clear that the paragraph does not refer to an existing right to participate in sport and leisure activities. It now reads:

"4. With a view to enabling persons with disabilities to participate on an equal basis as others in recreational, leisure and sporting activities, States Parties shall take appropriate measures to:"

Subparagraphs (a), (b), (c) and (d)

144. Some delegations proposed to remove the word "mainstream" from subparagraph (a) so that disability-specific activities would not be ruled out. Others thought, however, that because an overall aim of the convention is the inclusion of persons with disabilities in the mainstream, the deletion would not be appropriate. An alternative approach was suggested to include a reference to these disability-specific activities in subparagraph (b).

145. There was general support for inclusion of the concept of participation at local or municipal levels.

146. The subparagraphs currently read:

"(a) encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

"(b) ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and encourage the provision of appropriate instruction, training and resources in support that is available to other participants;

"(c) ensure that persons with disabilities have access to sporting and recreational and tourism venues, and that persons with disabilities have equal access to participating in sporting activities within the education system;

"(c) bis children with disabilities have equal access to participation in play, recreation, and leisure and sporting activities, including those in the school system;

"(d) ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities."

147. The draft article was referred to the facilitator (Monthian Buntan, Thailand) for further discussion.

Draft article 24 bis

148. The facilitator for draft article 24 bis (Mariana Olivera West, Mexico) introduced a revised draft designed to take into account the different proposals and views that had been expressed during the third session of the Ad Hoc Committee.

149. There was general agreement that international cooperation was a vital factor in the convention and would play an important part in assisting developing States.

150. There were different views expressed, however, on whether international cooperation should be dealt with in a separate article, and to what extent international cooperation should be detailed in the text of the draft convention.

151. Some delegations expressed concern that States Parties may be able to use a provision on international cooperation as a justification for non-implementation of the convention. The Committee noted, however, that it could be made clear in the final report of the conference adopting this convention that the international cooperation obligation did not detract from the obligation of States to implement the convention.

152. The Committee noted that article 4 of the Convention on the Rights of the Child provided one model. In addition, international cooperation was mainstreamed throughout the text of that Convention.

153. The Chair noted that it was likely that this convention would be accompanied by a detailed action plan, so a framework for international cooperation should be set out in the convention. Rule 22 of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities provided detailed guidance that could be considered in the formulation of an action plan.

154. The proposal was referred to the facilitator, who was requested to conduct further consultation.

Draft article 25

155. There was general agreement that the convention needed to include an article on both national and international monitoring.

156. There was general agreement that monitoring mechanisms needed to be effective. This was particularly important because of the lack of effective implementation of the existing rights for persons with disabilities.

157. Secondly, there was agreement that the monitoring provisions of this convention should be at least as good, and preferably better, than those of other treaties. Being the most recent human rights convention, its monitoring provisions will be the most up to date and will have the potential to serve as an example for the others.

158. The Committee noted the work being done to reform the existing treaty bodies, and the report being prepared by the Office of the High Commissioner for Human Rights for the seventh session of the Ad Hoc Committee. While there was agreement that these would usefully inform the Committee's discussion on monitoring provisions, many delegations also noted that the Committee should not be held hostage by time frames imposed by the reforms (this work had been going on for many years and might go on for some time yet). The Committee might have to decide on the monitoring provisions of this convention while still waiting for the outcomes of the reform work. It will be important, therefore, to ensure that the provisions are flexible enough to take account of later reforms and to come up with language that preserves that approach.

159. Thirdly, there was general support for the involvement and full participation of civil society, of both persons with disabilities and their representative organizations, in all levels of the monitoring process.

160. Most delegations were only able to express a preliminary view, and they look forward to further discussions at the next session, when they will have had an opportunity to consider the report of the Office of the High Commissioner for Human Rights to the Committee, and other proposals.